



IN THE
**SUPREME COURT
OF THE UNITED STATES**

October Term, 1976

Case No. 76-1674

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES, INC.,
a corporation, and
LAKE BUTLER APPAREL COMPANY,
a Florida corporation,

Appellants,

v.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,
STATE OF FLORIDA,

Appellee.

On Appeal From
The Supreme Court of the State of Florida

**STATEMENT OF APPELLEE OPPOSING
JURISDICTION AND MOTION TO
DISMISS AND/OR AFFIRM**

ROBERT A. CHASTAIN
General Counsel
FRANK A. GRAHAM, JR.
Resident Counsel
Florida Department of Agriculture
and Consumer Services
Room 513, Mayo Building
Tallahassee, Florida 32304

Attorneys for Appellee

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MOTION TO DISMISS AND/OR AFFIRM

The appellee in the above styled cause moves to dismiss and/or affirm on the grounds that the appellants have failed to comply with Rule 15 of the Rules of the Supreme Court of the United States in the preparation of their

Jurisdictional Statement and that the questions on appeal are so unsubstantial as not to need further argument.

STATEMENT OF FACTS

The appellee is authorized by the provisions of Section 570.44(3), Florida Statutes, to operate and manage road-guard inspection stations in the State of Florida, in order to perform the general inspection activities relating to agriculture, horticulture and livestock products and commodities as directed by the commissioner and the division directors of the department. Similarly, in conjunction with the authority granted in Section 570.44(3), Florida Statutes, the department's employees or officers have, by authority of Section 570.15(1)(a), Florida Statutes, (as amended in 1975) full access at reasonable hours to various places including trucks; motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag; and truck and motor vehicle trailers used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department. Section 570.15(2), Florida Statutes, (1975), also provides that it shall be unlawful for any truck or any truck or motor vehicle trailer to pass any road-guard inspection station without first stopping for inspection.

The duties of the road-guard inspection special officers consist of inspecting agricultural, horticultural and livestock products to determine if they are in compliance with various state and federal laws and marketing orders and to assist in disease control in plant and animal products.

Stephenson Enterprises, Inc., and Lake Butler Apparel Company are clothing manufacturers. Stephenson Enterprises, Inc., is located in Folkston, Georgia, and Lake But-

ler Apparel Company is located in Lake Butler, Florida. The geographical location of the two companies necessitates frequent passage of the Florida Department of Agriculture and Consumer Services' road-guard inspection stations.

During frequent trips between their respective Florida and Georgia manufacturers, the appellants have refused to stop at the fixed road-guard inspection stations of the appellee. In one instance, the appellants were stopped by a Baker County deputy sheriff at a road block after they failed to stop at the Macclenny, Baker County, Florida station. The deputy sheriff had been called by a road-guard inspection special officer after the appellants had failed to stop at the said fixed station. On this occasion, the appellant Norman Stephenson was arrested on two counts, (1) interference with the road-guard inspector and (2) failure to obey official traffic signs. These charges were subsequently dropped during the pendency of this case in the Baker County Circuit Court.

At no time during the various encounters of the appellants and the appellee's road-guard inspection special officers have the appellants been searched with or without a search warrant and at all times the appellants have adamantly refused to allow any inspection of their enclosed vehicle.

A. Trial Court Proceedings

The appellants filed a complaint for declaratory judgment and injunction against the appellee in the Eighth Judicial Circuit Court in and for Baker County, Florida. The appellants contended that the appellee had no statutory authority to require appellants' vehicle to stop for inspection at the road-guard inspection stations and that the appellee's attempts to compel appellants' vehicle to stop for inspection violated appellants' constitutional rights to due process of

law, equal protection of the law, and the right to be free from unreasonable searches and seizures, as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

On the appellants' motion for summary judgment, the trial court held that the appellee had both the constitutional and statutory authority under Sections 570.15 and 570.44(3), Florida Statutes, (1975), to require all trucks operating on public highways to stop for inspection to initially ascertain what was being transported. The trial court further held that the statutory scheme for stopping and inspecting was a valid exercise of the state's police power and was not repugnant to either state or federal constitutional provisions.

B. Attempted Direct Appeal to the Supreme Court of Florida

Appellants timely filed a Notice of Direct Appeal from the trial court's order denying the Motion for Summary Judgment to the Supreme Court of the State of Florida. That court subsequently entered an order dated May 7, 1975, transferring the case to the District Court of Appeal, First District, State of Florida.

C. Proceedings Before the District Court of Appeal, First District, State of Florida

After the case had been transferred by the Supreme Court of Florida to the First District Court of Appeal, and before any decision was rendered by the District Court of Appeal, Section 570.15, Florida Statutes, was amended by the Florida Legislature. See Section 570.15, Florida Statutes, (1975).

The amended version, Section 570.15, Florida Statutes, (1975), gave the Department of Agriculture and Consumer Services explicit statutory authority to require certain

classes of motor vehicles used in the production, transportation, or manufacture of products regulated by the department to stop at all road-guard stations. A refusal to stop by any truck or trailer operator after July 1, 1975, was made a criminal misdemeanor.

The District Court held that the operation of the amended statute facially and as it might be prospectively applied to appellants did not deprive them of their right to be free from unreasonable searches and seizures, their right to due process of law, their right to equal protection of the law, their right to privacy or their right to travel freely on the highways of the United States as guaranteed by both the federal and state constitutions. See 329 So.2d at 376, (A-9, Appellants' Appendix). The District Court also concluded that the stopping of appellants' vehicles and all other trucks and trailers for the purpose of inspection, without a warrant and without probable cause to believe that any violation of the law had been committed, was not a search and not an unreasonable seizure prohibited by the Fourth Amendment to the United States Constitution. 329 So.2d at 377; (A-11, Appellants' Appendix). The statutory requirement that all trucks and trailers stop at inspection stations for agricultural inspections was held to constitute a reasonable and valid exercise of the state's police power. 329 So.2d at 377; (A-11, Appellants' Appendix).

The District Court also held that the inspections authorized by the statutes in question appeared to be more akin to drivers' license checks than to detentions for criminal investigation, and that the stopping of such vehicle for such purpose is not a search and is not an unreasonable seizure; (A-11, Appellants' Appendix).

D. Proceedings Before the Supreme Court of Florida

Appellants thereafter timely appealed the decision of the District Court of Appeal, First District, to the Supreme

Court of Florida. The Decision and Order of the District Court of Appeal was affirmed by the Supreme Court of Florida on November 30, 1976. 342 So.2d 60; (A-12, Appellants' Appendix). The Supreme Court of Florida expressly affirmed that Section 570.15, Florida Statutes, (1975), was constitutional and did not deprive appellants of their right to be free from unreasonable searches and seizures, the right to due process of law and equal protection of the law, or the right to privacy and to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and similar provisions of the Florida Constitution. 342 So.2d 60; (A-15, Appellants' Appendix). The Supreme Court of Florida further held that Section 570.15, Florida Statutes, (1975), gave the Department of Agriculture and Consumer Services statutory authority to require all trucks and trailers to stop at agricultural inspection stations for purposes of inspection regardless of whether such trucks and trailers were used in the production, manufacture, storage, sale or transportation of any article or product regulated by the Department of Agriculture and Consumer Services.

Appellants timely filed a petition for rehearing in the Supreme Court of Florida. The petition for rehearing was denied on February 28, 1977. (A-18, Appellants' Appendix). Appellants thereafter timely filed on March 7, 1977, a notice of appeal seeking review in this Court of the Supreme Court of Florida's final decision and order.

ARGUMENT

The decision of the Florida Supreme Court in this case is eminently correct. Appellants seem to confuse the enforcement authority and responsibility of Florida's road-guard inspection special officers with the "indiscriminate stoppings" proscribed by *Carroll v. United States*, 267 U.S. 132 (1925).

Section 570.15, Florida Statutes, (1975), does not "... subject all persons lawfully using the highways to the inconvenience and indignity ..." of a search, 267 U.S. at 154, as appellants would lead this Court to believe. Rather, the statute authorizes access by specific agricultural officials to certain premises, trucks and motor vehicles used in the agricultural process. To the point of this case, the statute merely requires trucks, and truck or motor vehicle trailers, to stop at any official road-guard inspection station.

Appellants seem to raise, for the first time in their jurisdictional statement, the issue of "roving patrol guards". (Jurisdictional Statement, at 6, 11). This issue was not presented in the proceeding below and therefore is not properly before this honorable Court.

The authorities cited by appellants express uniform concern for the Fourth Amendment limits on search and seizure powers to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals. However, the Florida Statute under attack in this appeal merely allows access to specified places of business, vehicles and records involved in or related to the agricultural process, *so long as such access is not refused* by the owner, agent or manager of such premises or by the driver of such vehicle. In the event of refusal of access, the statute clearly mandates that a search warrant be obtained, or the search be conducted pursuant to the statutory requirement of a warrantless search. The Florida Supreme Court held in its opinion that, "Such in no way impairs appellants' right to be free from *unreasonable* search and seizure, their right to due process of law, or their right to equal protection of the law." (A-16, Appellants' Appendix).

This holding is amply supported by precedent of this Court in the recent case of *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

The question then narrows to the reasonableness of the requirement, contained in section (2) of the statute under discussion, that trucks, and trailers drawn by trucks or motor vehicles, stop for inspection. As the District Court of Appeal logically noted, "Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' " (A-9, Appellants' Appendix).

Both Florida appellate decisions further recognized that "agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investigations . . ." (A-11, 16, Appellants' Appendix) and such drivers' license checks have been recognized as reasonable and therefore acceptable in *Myricks v. United States*, 370 F.2d 901 (5th Cir.), cert. dismissed, 386 U.S. 1015 (1967), citing *City of Miami v. Aronovitz*, 114 So.2d 784 (Fla. 1959). The stopping of trucks at a weigh station by state authorities, and their subsequent inspection, was approved by the federal courts in *United States v. Rivera-Rivas*, 380 F. Supp. 1007 (D.N.M. 1974), as was the inspection of airline passenger baggage in *United States v. Schafer*, 461 F.2d 856 (9th Cir. 1972).

There is no question but that Section 570.15(2), Florida Statutes, (1975), represents some interference with appellants' right to travel and his right to privacy. *Martinez-Fuerte, supra*, presented a similar situation with a similar intrusion into individual rights. The question now presented is whether the interference involved is or is not an unreasonable interference. *Martinez-Fuerte, supra*, at 1126. The test is one of weighing the competing interests of the parties, and determining who would lose the most if the procedure involved was stricken. *Id.*

Appellee argues that the test has already been undertaken in *Martinez-Fuerte, supra*, and the result there announced, (that the interests of the government justify the interference), answers the question here involved. The balance of interests involved in the case *sub judice* is synonymous with that considered in *Martinez-Fuerte, supra*. Appellee therefore argues that the same result should obtain here.

This Court, in *Camara v. Municipal Court*, 387 U.S. 523 (1967), recognized that in certain instances regulatory enforcement requires procedures which cannot be dealt with in terms of traditional individualized probable cause. In *Camara, supra*, this Court announced the concept of the "area" search warrant. The "area" search warrant was clearly a great relaxation in traditional probable cause requirements, and in reality approached the status of mere formality. In *Martinez-Fuerte, supra*, this Court recognized the futility of "area" warrants in the context of something as mobile as a motor vehicle.

CONCLUSION

The questions attempted to be raised in the jurisdictional statement are unsubstantial. There are no real questions here involved, federal or otherwise, for the question that formerly existed has already been answered by this Court. The appeal should be dismissed, or in the alternative, this Court should affirm the decision below, on the basis of *Martinez-Fuerte, supra*.

Respectfully submitted,

ROBERT A. CHASTAIN
General Counsel

FRANK A. GRAHAM, JR.
Resident Counsel
Department of Agriculture
and Consumer Services
Room 513, Mayo Building
Tallahassee, Florida 32304

Attorneys for Appellee

CERTIFICATE OF SERVICE

I, Robert A. Chastain, one of the attorneys for the Department of Agriculture and Consumer Services, State of Florida, and a member of the Bar of the Supreme Court of the United States, hereby certify that, pursuant to Rule 33.3(b) of the Rules of this Court, I served three copies of the foregoing STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO DISMISS AND/OR AFFIRM, by United States Mail to Allan P. Clark of Caven and Clark, P.A., 1216 Atlantic National Bank Building, Jacksonville, Florida 32202, Attorney for Appellants, this 24th day of June, 1977.

ROBERT A. CHASTAIN
Attorney for Appellee

APPENDIX

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SECTION 570.15, FLORIDA STATUTES (1975)**570.15 Access to places of business and vehicles.—**

(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:

1. Places of business;
2. Factories;
3. Farm buildings;
4. Carriages;
5. Railroad cars;
6. Trucks;
7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. Vessels; and
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation

of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 59-54; s. 1, ch. 75-215.

SECTION 570.44(3), FLORIDA STATUTES (1975)**570.44 Division of Inspection; powers and duties.—**
The Division of Inspection shall be divided into not less than three bureaus as follows:

(3) **BUREAU OF ROAD GUARDS.**—It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director.

History.—s. 1, ch. 59-54, ch. 61-407; ss. 4, 14, 35, ch. 69-106.